In The

Supreme Court of the United States

OCTOBER TERM, 1964

No. ----------

WAVERLY C. BROADWELL and
NANCY BROADWELL, his wife, and
DOHN BROADWELL,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

Appendix for Petitioners

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPENDIX A
OPINION BELOW

OPINION OF THE UNITED STATES
COURT OF APPEALS FOR
THE FOURTH DISTRICT

Waverly C. Broadwell and Nancy Broadwell, his wife, Appellants, v. United States of America, Appellee, No. 9751. Dohn Broadwell, Appellant, v. United States of America, Appellee, No. 9752.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AT FAYETTEVILLE. J. BRAXTON CRAVEN, JR., DISTRICT JUDGE.

(Argued March 3, 1965. Decided March 8, 1965.)

Before HAYNSWORTH, Chief Judge, BRYAN, Circuit Judge, and BUTZNER, District Judge.

Frank P. Meadows, Jr., (Meadows & Batts on brief) for Appellants, and George F. Lynch, Attorney, Department of Justice, (Louis F. Oberdorfer, Assistant Attorney General, Lee A. Jackson and Joseph Kovner, Attorneys, Department of Justice, and Robert H. Cowen, United States Attorney, and Gerald L. Bass, Assistant United States Attorney, on brief) for Appellee.

PER CURIAM:

By quia timet suits against the United States under 28 USC 2410, Waverly C. Broadwell, Nancy, his wife, and Dohn Broadwell, appellants, endeavored to remove the lien on their properties of income taxes assessed upon them for the year 1959. The object of the complaints, the appellants candidly concede, was to dispute the validity of the assessments. With the District Judge, and for the reasons he gives in his memorandum on dismissing the actions, 234 F.Supp. 17, we think: (1) that 28 USC 2410 is not available for the purpose for which it is now invoked, and (2) that appellants have not shown "the existence of special and extraordinary circumstances" warranting resort to a court of equity to contest the taxes, in the face of the prohibitions of 26 USC 7421(a), 7422.

Affirmed.

APPENDIX B

STATUTES INVOLVED

26 U. S. CODE, SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U. S. CODE, SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by Sec. 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

26 U. S. CODE, SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) Tax. Except as provided in Sec.6212 (a) and (c), and 6213 (a), no suits for the purposes of restraining the assessment or collection of any tax shall be maintained in any court.

(b) Liability of transferee or fiduciary. — No suit shall be maintained in any court for the purposes of restraining the assessment or collection (pursuant to the provision of Chapter 71) of—(1) the amount of the liability, at law or in equity, of a transferee of property of the taxpayer in respect of any internal revenue tax, or (2) the amount of the liability of the fiduciary under Sec. 3467 of the revised statutes (32 USC 192) in respect of any such tax.

26 U. S. CODE, SEC. 7424.
CIVIL ACTION TO CLEAR TITLE TO PROPERTY.

(a) Obtaining Leave to File.—

(1) REQUEST FOR INSTITUTION OF PROCEEDINGS BY UNITED STATES.—Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make written request to the Secretary or his delegate to authorize the filing of a civil action as provided in section 7403.

(2) PETITION TO COURT.—If the Secretary or his delegate fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Secretary or his delegate, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

(3) COURT ORDER.—After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the property shall be made parties.

(b) Adjudication.—Upon the filing of such civil action, the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 7403. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(c) Costs.—All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action.

28 U. S. CODE, SEC. 1340. INTERNAL REVENUE; CUSTOM DUTIES.

The District Court shall have original jurisdiction of any civil action arising under any act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Customs Court.

28 U. S. CODE, SEC. 1964. CONSTRUCTIVE NOTICE OF PENDING ACTIONS.

Where the law of a State requires that a notice of an action concerning real property pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parrish in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States district court to be registered, recorded, docketed, or indexed in the same manner or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in the United States district court as it relates to real property in such State.

28 U. S. CODE, SEC. 2201. CREATION OF REMEDY.

In case of an actual controversy within its jurisdiction, except with respect to the Federal taxes, any court of the United States upon the filing of appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U. S. CODE, SEC. 2410. ACTIONS AFFECTING PROPERTY ON WHICH UNITED STATES HAS LIEN.

(a) Under the conditions prescribed in this section

and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint shall set forth with particularity the nature of the interest or lien of the United States. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States, shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the

foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises.

(d) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who may issue a certificate releasing the property from such lien.

N. C. GENERAL STATUTES, SEC. 1-116. (1963 Supp.) FILING NOTICE OF SUIT.

(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G. S. 1-117, in the following cases:

(1) Actions affecting title to real property;

(2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property; and

(3) Actions in which any order of attachment is issued and real property is attached.